

AMENDMENTS TO THE CLAIMS:

Please add new claims 34-39. Pursuant to 37 C.F.R. §1.121, as amended, a detailed listing of all claims that are, or were, in the application, is listed below. The current status of all claims is indicated in parentheses after the claim number:

1 1. (Previously Amended) A writing instrument comprising:
2 a barrel having a channel, an open end, and a side surface;
3 an actuator located on said side surface of said barrel; and
4 a writing element disposed in said channel and movable along a longitudinal
5 axis between a retracted position and an extended position;
6 wherein:
7 said writing element is operatively connected to said actuator;
8 at least a portion of said writing element is resilient;
9 said writing element is deflected in a direction substantially transverse to the longitudinal axis
10 upon being moved into said extended position; and
11 the resiliency of said writing element biases said writing element to engage
12 said channel and to retain said writing element in said extended position.

1 2. (Original) The writing instrument of claim 1, wherein said writing element is
2 bent such that the resiliency of said writing element biases said writing element to engage
3 said channel.

1 3. (Original) The writing instrument of claim 1, further comprising a first
2 engagement member associated with said writing element, wherein said first engagement
3 member engages said channel.

1 4. (Original) The writing instrument of claim 3, wherein said first engagement
2 member is a pawl.

1 5. (Original) The writing instrument of claim 4, further comprising a second
2 engagement member associated with said channel, wherein said first engagement member
3 engages said second engagement member.

1 6. (Original) The writing instrument of claim 5, wherein said second
2 engagement member is an indentation formed on said channel.

1 7. (Original) The writing instrument of claim 5, wherein said second
2 engagement member is a ledge formed on said channel.

1 8. (Original) The writing instrument of claim 1, further comprising a sleeve
2 member disposed in said channel for receiving a portion of said writing element, wherein said
3 sleeve member engages said channel to retain said writing element in said extended position.

1 9. (Original) The writing instrument of claim 8, further comprising a first
2 engagement member located on said sleeve member.

1 B1 10. (Original) The writing instrument of claim 1, wherein said writing element is
2 a living spring.

1 11. (Previously Amended) A writing instrument comprising:
2 a barrel having an open end, a closed end, and a channel extending between
3 said open end and said closed end; and
4 a writing element having a writing end, said writing element being disposed in
5 said channel and movable along a longitudinal axis between a retracted position with said
6 writing end within said channel and an extended position with said writing end extending
7 through and outside said open end;

8 wherein:

9 said writing element resiliently engages said channel to retain said writing
10 element in said extended position; and
11 movement of said writing element in a direction substantially transverse to the
12 longitudinal axis disengages said writing element from said channel to return said writing
13 element to said retracted position.

1 12. (Original) The writing element of claim 11, wherein movement of said
2 writing element in a direction substantially transverse to the longitudinal axis is caused by
3 bending said writing element.

1 13. (Original) The writing instrument of claim 11, wherein said writing element is
2 resilient.

1 14. (Original) The writing instrument of claim 11, further comprising a release
2 member located on a side surface of said barrel and movable from a rest position to a release
3 position;

4 wherein movement of said release member to said release position disengages
5 said writing element from said channel.

1 15. (Original) The writing instrument of claim 14, wherein movement of said
2 release member to said release position bends said writing element in a direction substantially
3 transverse to the longitudinal axis.

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2 16. (Original) The writing instrument of claim 14, further comprising a first
3 engagement member associated with said writing element, said first engagement member
4 configured and dimensioned to engage said channel and to retain said writing element in said
extended position.

1 17. (Original) The writing instrument of claim 16, wherein a portion of said
2 release member contacts said first engagement member.

1 18. (Original) The writing instrument of claim 16, wherein a portion of said
2 release member contacts said writing element at a location spaced apart from said release
3 member.

1 19. (Original) The writing instrument of claim 14, wherein said release member is
2 a cantilever beam.

1 20. (Original) The writing instrument of claim 14, further comprising a grip
2 element covering at least a portion of said release member.

1 21. (Original) The writing instrument of claim 14, wherein said release member is
2 pivotably coupled to said barrel.

1 22. (Original) The writing instrument of claim 14, further comprising a grip
2 element formed on said barrel, wherein said release member comprises a portion of said grip
3 element.

1 23. (Original) The writing instrument of claim 11, further comprising a sleeve
2 member disposed in said channel for receiving a portion of said writing element, wherein said
3 sleeve member resiliently engages said channel to retain said writing element in said
4 extended position.

1 24. (Original) The writing instrument of claim 23, further comprising a first
2 engagement member located on said sleeve member.

1 25. (Previously Amended) A writing instrument comprising:
2 a barrel having a substantially straight longitudinal channel and an open end
3 through which a writing element is extendable along a longitudinal axis; and
4 an actuator member disposed on a side surface of said barrel and movable
5 between a first position defining a first length between said actuator member and said open
6 end along the longitudinal axis, and a second position defining a second length between said
7 actuator member and said barrel open end along the longitudinal axis, said second length
8 being shorter than said first length;
9 wherein said actuator member moves along a non-linear path between said
10 first position and said second position.

1 26. (Original) The writing instrument of claim 25, wherein said actuator member
2 pivots as it moves between said first position and said second position.

1 27. (Original) The writing instrument of claim 25, wherein said actuator member
2 moves along an arcuate path between said first position and said second position.

1 28. (Original) The writing instrument of claim 25, wherein said actuator member
2 is disposed on a non-planar surface, and slides along said non-planar surface between said
3 first position and said second position.

1 29. (Original) The writing instrument of claim 25, wherein said non-planar
2 surface is concave.

1 30. (Original) The writing instrument of claim 25, further comprising a writing
2 element disposed in said channel and moveable between a retracted position and an extended
3 position; wherein:

4 said writing element is in said retracted position when said actuator member is
5 in said first position; and

6 said writing element is in said extended position when said actuator member is
7 in said second position.

1 31. (Original) The writing instrument of claim 30, wherein said writing element is
2 pivotably coupled to said actuator element.

1 32. (Original) The writing instrument of claim 25, further comprising a sleeve
2 member disposed in said channel for receiving a portion of a writing element, wherein said
3 sleeve member is pivotably coupled to said actuator member.

1 33. (Previously Added) The writing instrument of claim 1, wherein said writing
2 element returns to a substantially straight configuration when in said extended position.

1 34. (New) The writing instrument of claim 1, further comprising a release
2 member located on a side surface of said barrel and movable from a rest position to a release
3 position;

4 wherein movement of said release member to said release position disengages said
5 writing element from said channel.

B1 35. (New) The writing instrument of claim 34, further comprising a first
2 engagement member associated with said writing element and configured and dimensioned to
3 engage said channel and to retain said writing element in said extended position;
4 wherein a portion of said release member contacts said first engagement member.

1 36. (New) The writing instrument of claim 34, wherein said release member is a
2 cantilever beam.

1 37. (New) The writing instrument of claim 34, further comprising a grip element
2 covering at least a portion of said release member.

1 38. (New) The writing instrument of claim 34, wherein said release member is
2 pivotably coupled to said barrel.

1 39. (New) The writing instrument of claim 16, further comprising a second
2 engagement member associated with said channel, wherein said first engagement member
3 engages said second engagement member.
